

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
MISCELLANEOUS NO. 3:06-MC-83**

ORDER

**IN RE: HONORABLE FRANK D. WHITNEY PRESIDING JUDGE
REFERRALS TO MAGISTRATE JUDGES**

THIS MATTER is before the Court on its own motion regarding the referral of motions, and other duties, to Magistrate Judges serving in this district pursuant to 28 U.S.C. § 636.

REGARDING CRIMINAL CASES, IT IS ORDERED THAT pursuant to 28 U.S.C. §§636 (a) and (b), and Local Rule LCr57.1, in criminal cases assigned to the Honorable Frank D. Whitney, the Magistrate Judges shall be specifically referred the following duties:

- 1) To accept guilty pleas or conduct trials on misdemeanor and petty offenses for which the maximum term of imprisonment is one year or less, if the defendant has consented to proceed before a Magistrate Judge;
- 2) To accept tendered guilty pleas on felony offenses subject to acceptance by the District Court, provided that any motions to review bond conditions, filed at or after the time a guilty plea is filed, shall be directed to the District Judge. On a case-by-case basis, and for the convenience of the parties, the undersigned may accept guilty pleas in cases during regularly scheduled terms of court;
- 3) To conduct hearings pursuant to 18 U.S.C. § 3142, and 28 U.S.C. § 636(a)(2) provided that upon notice that a party intends to file a motion for revocation of a release order or amendment of the conditions of release, pursuant to 18 U.S.C. § 3145, any release order shall be stayed pending disposition by the District Judge;
- 4) To enter a final order on any other non-dispositive criminal pretrial motions, subject only to review by the District Court for clear error (if properly appealed);
- 5) To make findings of fact, conclusions of law, and to recommend disposition of any dispositive criminal motion, excluding motions to suppress evidence, through submission of a Memorandum and Recommendation to the District Judge. All motions to suppress shall be directed to the District Judge;
- 6) To perform all other duties as authorized in Local Rule LCr57.1 that are not

contrary to the specific duties as set forth within this order.

IT IS FURTHER ORDERED THAT:

- 7) Beginning two (2) weeks prior to calendar call for any trial term (or peremptory setting), all trial-related motions such as motions in limine, motions for issuance of subpoenas pursuant to FED.R.CRIM.P.17(b), etc., shall be directed to the District Judge for disposition; and
- 8) Motions to continue cases from the trial calendar shall be directed to the District Judge.

REGARDING CIVIL AND MISCELLANEOUS CASES, IT IS ORDERED THAT,

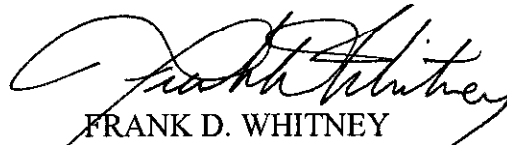
pursuant to 28 U.S.C. § 636(b) and Local Rule LR72.1, in civil and miscellaneous cases assigned to the Honorable Frank D. Whitney, the Magistrate Judge shall be specifically referred the following duties:

- 1) To preside over any pretrial conference requested and issue all initial pretrial scheduling orders as a result of the conference or filing of the proposed discovery plan as authorized by Local Rule LR161.1(B);
- 2) To dispose of any civil pretrial motions pertaining to discovery arising under Rules 26, 27, 34, 35, 36 and 37 of the Federal Rules of Civil Procedure, including any motion for sanctions under Rule 37(b) arising out of these referred motions, motions for protective orders, and motions to quash; motions to amend; and motions to strike, subject only to review by the District Court for clear error (if properly appealed);
- 3) To make findings of fact, conclusions of law, and to recommend disposition of any motions filed for sanctions, motions to remand, and all Rule 12(b) motions, including motions to dismiss for lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief may be granted, and failure to join a party under Rule 19;
- 4) To make findings of fact, conclusions of law, and to recommend disposition of any dispositive motion filed on Social Security Appeals through submission of a Memorandum and Recommendation to the District Judge;
- 5) To hear bankruptcy appeals and make recommendations, if referred by the Court on a case-by-case basis;
- 6) To enter orders involving any post-judgment execution proceedings; and

- 7) To perform all other duties as authorized in Local Rule LR72.1 which are not contrary to the specific duties as set forth within this order.

IT IS FURTHER ORDERED THAT:

- 8) Summary judgment motions will not automatically be referred to a Magistrate Judge; rather, the Court will refer such motions on a case-by-case basis for a recommended disposition; and
- 9) This Court retains the option to designate certain dispositive motions filed in civil cases, with the exception of Social Security Appeals, for referral to a Magistrate Judge in the discretion of this District Judge on a case-by-case basis. The referral of a specific civil dispositive motion will be communicated to the Deputy Clerk and the parties by a separate Order of Reference on the pending dispositive matter authorizing the Magistrate Judge to make findings of fact, conclusions of law, and to recommend disposition of the matter.



FRANK D. WHITNEY
United States District Judge